No. 91-6316

FILED
MAY 8 1992
OFFICE OF THE CLERK

In The
Supreme Court of the United States
October Term, 1991

EDWARD SOLDAL, et al.,

Petitioners,

v.

COUNTY OF COOK, et al.,

Respondents.

CORRECTED COPY

On Writ Of Certiorari To The
United States Court Of Appeals
For The Seventh Circuit

BRIEF AMICI CURIAE OF THE AMERICAN CIVIL LIBERTIES UNION AND AMERICAN CIVIL LIBERTIES UNION OF ILLINOIS IN SUPPORT OF PETITIONERS

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QUESTION PRESENTED

The amici curiae will address the following question:

Whether the Fourth Amendment's prohibition of unreasonable seizures is implicated, and whether a remedy under 42 U.S.C. § 1983 for violation of that prohibition may be available, when state officials forcibly and illegally remove a family's trailer home from its site.

TABLE OF CONTENTS

Page

QUESTION PRESENTED i

INTEREST OF THE AMICI CURIAE 1

STATEMENT 2

INTRODUCTION AND SUMMARY OF ARGUMENT . . . 3

ARGUMENT 5

I. THE STATE'S UNLAWFUL REMOVAL OF THE SOLDALS' TRAILER HOME WAS A SEIZURE WITHIN THE SCOPE OF THE FOURTH AMENDMENT 5

A. Seizures Of Property Like The Removal Of The Soldals' Home Must Be Judged Under The Fourth Amendment's Reasonableness Standard 6

B. Recognition That The Fourth Amendment Is Implicated By The Removal Of The Soldal Family's Home Invites No Undue Expansion Of Federal Litigation 10

C. The Seizure Of The Soldal Family's Home Invaded Their Privacy And Liberty Interests As Well As Their Possessory Interest In Their Property 13

II. THERE IS NO REQUIREMENT THAT SECTION 1983 CLAIMS BE JUDGED SOLELY UNDER THE CONSTITUTIONAL STANDARD APPROPRIATE TO THE "DOMINANT CHARACTERISTIC" OF THE CLAIM 16

CONCLUSION 19

TABLE OF AUTHORITIES

Cases: Page

Arizona v. *Hicks*, 480 U.S. 321 (1987) 7

Boyd v. *United States*, 116 U.S. 616 (1886) 12

Camara v. *Municipal Court*, 387 U.S. 523 (1967) 9, 14

Davis v. *A & J Electronics*, 792 F.2d 74 (7th Cir. 1986) . . 16

G.M. Leasing Corp. v. *United States*, 429 U.S. 338 (1977) 9

Graham v. *Connor*, 490 U.S. 386 (1989) . . . . . *passim*

Horton v. *California*, 496 U.S. 128 (1990) 8, 9

Hudson v. *Palmer*, 468 U.S. 517 (1984) 9, 10

Katz v. *United States*, 389 U.S. 347 (1967) 9, 14

Lavoie v. *Bigwood*, 457 F.2d 7 (1st Cir. 1972) 16

Maryland v. *Macon*, 472 U.S. 463 (1985) 7

Memphis Light, Gas & Water Div. v. *Craft*, 436 U.S. 1 (1978) 11

Michigan Dep't of State Police v. *Sitz*, 110 S. Ct. 2481 (1990) 1

National Treasury Employees Union v. *Von Raab*, 489 U.S. 656 (1989) 1

O'Connor v. *Ortega*, 480 U.S. 709 (1987) 13

Oliver v. *United States*, 466 U.S. 170 (1984) 14

Olmstead v. *United States*, 277 U.S. 438 (1928) 13

Silverman v. *United States*, 365 U.S. 505 (1961) 14

Skinner v. *Railway Labor Executives' Ass'n*, 489 U.S. 602 (1989) 1

Texas v. *Brown*, 460 U.S. 730 (1983) 7

United States v. *General Motors Corp.*, 323 U.S. 373 (1945) 8

United States v. *Jacobsen*, 466 U.S. 109 (1984) . . . 7, 8, 9, 13

United States v. *Lindsey*, 877 F.2d 777 (9th Cir. 1989) 14

United States v. *Place*, 462 U.S. 696 (1983) 7, 15

United States v. *Salvucci*, 448 U.S. 83 (1980) 9

United States v. *Verdugo-Urquidez*, 494 U.S. 259 (1990) 12

Yee v. *City of Escondido*, 60 U.S.L.W. 4301 (U.S. Apr. 1, 1992) 2, 15

Zinermon v. *Burch*, 494 U.S. 113 (1990) 17, 18, 19

Statute:

42 U.S.C. § 1983 . . . . . *passim*

Miscellaneous:

Bureau of Census, American Housing Survey for the United States, Table 2-12 (1989) 16

N. Lasson, *The History and Development of the Fourth Amendment to the United States Constitution* (1937) 12

Wasserstrom, *The Fourth Amendment's Two Clauses*, 26 Am. Crim. L. Rev. 1389 (1989) 12

Webster's Third New International Dictionary (1971) 6

BRIEF AMICI CURIAE OF THE AMERICAN CIVIL LIBERTIES UNION AND AMERICAN CIVIL LIBERTIES UNION OF ILLINOIS IN SUPPORT OF PETITIONERS

The American Civil Liberties Union and American Civil Liberties Union of Illinois submit this brief as amici curiae in support of petitioners.*

INTEREST OF THE AMICI CURIAE

The American Civil Liberties Union ("ACLU") is a nationwide, non-profit organization with over 300,000 members, dedicated to the protection and defense of the civil rights and civil liberties of all Americans. The ACLU of Illinois is one of its state affiliates. Amici have long been active in the defense of individual liberties guaranteed by the Fourth Amendment, having appeared before this Court in numerous Fourth Amendment cases both on direct representation and as amici. See, *e.g.*, *Michigan Dep't of State Police* v. *Sitz*, 110 S. Ct. 2481 (1990); *Graham* v. *Connor*, 490 U.S. 386 (1989); *Skinner* v. *Railway Labor Executives' Ass'n*, 489 U.S. 602 (1989); *National Treasury Employees Union* v. *Von Raab*, 489 U.S. 656 (1989).

Among the individual liberties at the core of the Fourth Amendment which the ACLU seeks to protect from unwarranted government intervention is the sanctity and solitude of one's home. This right encompasses constitutionally protected possessory interests, and embodies substantial privacy and liberty components as well. Because the extraordinary abuse of power by government officials in this case to physically wrest away petitioners' home implicates these important values, the ACLU is concerned about the alarming decision of the court of appeals which places severe limitations on remedies available to persons who are wronged by such lawless action.

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* Written consents of the parties to the filing of this brief have been filed with the Clerk.

We respectfully believe that our involvement in and familiarity with Fourth Amendment issues will assist the Court in considering the issues presented by this case.

STATEMENT

Because petitioners' 42 U.S.C. § 1983 civil rights suit alleging violation of their Fourth Amendment rights was dismissed below on a motion for summary judgment, the record must be construed in the light most favorable to their claim. On that basis, the facts necessary to decide this case are very simple.

The Soldal family, Edward, his wife Mary, and their four minor children, like millions of other Americans owned and made their home in a trailer or "mobile home" -- a misnomer, since trailer homes are "largely immobile as a practical matter." *Yee* v. *City of Escondido*, 60 U.S.L.W. 4301, 4302 (U.S. Apr. 1, 1992). They rented a site or "pad" for their home in an Illinois trailer park from respondent Terrace Properties. Employees of Terrace (also named as respondents) illegally evicted the Soldals from the trailer park without obtaining an eviction order from a court. These employees disconnected the Soldals' home from basic utilities by wrenching sewer and water connections off its side and cutting off the telephone; then they tore off the trailer's canopy and skirting. Pet. App. B 1244. They thereafter hitched the home to a tractor, pulled it free of its moorings, and towed it to a nearby lot, where they left it in a damaged and unusable state. Some members of the Soldal family had to spend the night in a motel; the others stayed in a friend's trailer. *Ibid.*

Terrace's employees conspired in the removal of the Soldals' home from the trailer park with the respondent Cook County deputy sheriffs, who were present throughout the eviction for the avowed purpose of preventing Mr. Soldal from interfering with the illegal towing-away of his home -- that is, to prevent Soldal from exercising his right under Illinois law to take reasonable steps to defend against an unlawful eviction. Because it is well-established that co-conspirators are responsible in law for each other's acts, the Seventh Circuit properly held that this case must be treated in

its current posture "as if the deputy sheriffs themselves seized the trailer, disconnected it from the utilities, and towed it away," and "[e]quivalently * * * as if they had deputized the private defendants to assist them," so that the private defendants were acting as state officials. Pet. App. A 1075. That holding is not in issue in this case, and for present purposes it must be assumed that "*all* of the defendants * * * acted under color of state law" (*ibid.*), and that all were equally responsible for the violation of petitioners' rights.

INTRODUCTION AND SUMMARY OF ARGUMENT

In this brief, amici will address two of the issues presented by this case: First, whether a "seizure" occurs within the meaning of the Fourth Amendment when state officials physically remove a family's trailer home from its site in violation of state law; second, whether the victims of the seizure are barred from maintaining a suit under 42 U.S.C. § 1983 for violation of their Fourth Amendment rights because "the dominant character of the conduct challenged * * * is a repossession or eviction conventionally challenged [as a deprivation of] due process," which for Section 1983 purposes "determines the [only] constitutional standard under which [the conduct may be] evaluated." Pet. App. A 1080.

A bare majority of the Seventh Circuit Court of Appeals held, en banc, that although the physical removal of a person's home is undeniably a "seizure" in the ordinary sense of that term, it does not constitute a "seizure" for Fourth Amendment purposes because "*no* interest protected by the Fourth Amendment is involved." Pet. App. A 1080. The Fourth Amendment, the court held, protects only against invasions of privacy or liberty, or of possessory interests infringed incident to such invasions, and it does not reach "mere" seizures of property. *Id.* at 1076-1080. Because the seizure of petitioners' home, according to the majority below, infringed only the family's property rights, and not their privacy or liberty (*id.* at 1078, 1079-1080), it did not implicate their Fourth Amendment rights.

In addition, the court of appeals held that even if "there is some element or tincture of a Fourth Amendment seizure" when state officials tow away a family's home, still the *dominant* character of the state's action is a violation of property rights. The majority ruled, based on its reading of *Graham* v. *Connor*, 490 U.S. 386 (1989), that it is the dominant character of challenged conduct that provides the sole constitutional standard for its evaluation in a Section 1983 suit. The court found that petitioners' claim is therefore cognizable in a Section 1983 action only as a deprivation of property in violation of the Due Process Clause of the Fourteenth Amendment. Pet. App. A 1080.

None of the Seventh Circuit's three central holdings -- that the Fourth Amendment does not apply to seizures of property rights "as such" (Pet. App. A 1079); that the seizure of the Soldal family's home infringed only their property rights; and that even if other interests were implicated, it is only the "dominant" character of the seizure as a property violation that would be actionable in a Section 1983 suit, as a due process violation -- bears any discernable relation to this Court's precedents, and each is truly extraordinary as a matter of constitutional or statutory interpretation. Indeed, so mistaken are these determinations that it would be very difficult to conceive of their genesis, were it not for the court of appeals' disclosure that it considered these new rules necessary to prevent plaintiffs "trivializing" the Fourth Amendment by using it as a sword in "garden-variety commercial disputes of the sort involved in this case," increasing the workload of the federal courts in the process. *Id.* at 1076, 1077. That reasoning is seriously flawed. It rests on a mischaracterization of the dispute in this case that denigrates the interests of a large number of Americans who live in trailer homes; it misjudges the effects of holding the Fourth Amendment to be implicated by the seizure at issue here, and of holding Section 1983 suits to be available to remedy unreasonable seizures of this sort; and it relies on an illegitimate reason for overriding a textually and precedentially justified interpretation of the Fourth Amendment's scope. In short, the court of appeals majority has stripped the Fourth

Amendment of a significant part of its content and has called into question decades of consistent Fourth Amendment jurisprudence.

Respondents' conduct in this case was precisely the sort of lawless and arbitrary abuse of state power that the Fourth Amendment originally was meant to prohibit. Properly interpreted, the Fourth Amendment requires that state officials, before forcibly dispossessing a citizen of his or her home, comply with the procedures mandated for other (less drastic) searches and seizures. The holding to the contrary below represents a dangerous and unprecedented restriction of Fourth Amendment freedoms that should not be allowed to stand.

ARGUMENT

I. THE STATE'S UNLAWFUL REMOVAL OF THE SOLDALS' TRAILER HOME WAS A SEIZURE WITHIN THE SCOPE OF THE FOURTH AMENDMENT.

The Seventh Circuit held in this case that state officials' actions in forcibly disconnecting the Soldal family's home from utilities, stripping it of its skirting and canopy, and physically removing the home from its site in a trailer park to a nearby lot, where they left it disabled, did not even implicate (let alone violate) the Fourth Amendment's protection of "[t]he right of the people to be secure in their persons, houses, papers and effects against unreasonable * * * seizures." The court reasoned that these actions involved no "seizure" within the meaning of the Amendment. It justified this extraordinary interpretation by positing a new constitutional order, in which the Fourth Amendment protects only privacy and liberty interests (and property interests closely incident thereto), leaving property interests "as such" to be covered by the Due Process or Takings Clauses of the Fifth and Fourteenth Amendments. Beyond a spurious neatness, this approach has absolutely nothing to recommend it. The removal of the Soldals' home was a "seizure" within the plain language of the Fourth Amendment and within the meaning that has

consistently been attributed to the term in this Court's Fourth Amendment jurisprudence.

In any event, even as misinterpreted by the court of appeals, the Fourth Amendment clearly encompasses the state's confiscation of the Soldals' home in this case. The court's determination that removal of the home did not infringe the Soldals' interests in privacy and liberty is wholly without merit, resting on an unrealistic conception of privacy and liberty as those interests are implicated by the living arrangements in which millions of Americans find themselves, either by choice or as the result of economic standing, and on a blinkered view of this Court's precedents.

A. Seizures Of Property Like The Removal Of The Soldals' Home Must Be Judged Under The Fourth Amendment's Reasonableness Standard.

Because the Soldals' home was physically confiscated by persons acting as state officials, "in a literal sense [there was] a 'seizure' of the[ir] home and its contents," as the court of appeals was obliged to acknowledge. Pet. App. A 1076. The plain language of the Fourth Amendment -- the ordinary meanings of the verb "to seize" as being "to possess or take by force" or "to take hold of" something (Webster's Third New International Dictionary 2057 (1971)) -- undeniably and exactly covers the removal of the Soldals' home from its site.

In spite of the straightforward and unmysterious nature of the constitutional text, the court of appeals held there was no seizure in this case within the meaning of the Fourth Amendment. As the first step toward reaching this surprising conclusion, the court conceived a new principle for organizing constitutional claims in a neat and undemanding way -- a principle it deemed to be more important than fidelity to the text. "[I]nterests in property," the court announced, are henceforth to be treated as being "protected by different * * * provisions" of the Constitution than interests "in (Fourth Amendment) privacy" or liberty, and "deprivations of property [are] to be regulated by the due process [or takings]

clause[s]" only -- not by the Fourth Amendment. Pet. App. A 1077-1078.

In order to adopt this novel constitutional analysis, the Seventh Circuit had to sweep away a remarkably consistent line of decisions by this Court to the effect that it is property interests that lie at the core of the Fourth Amendment's protection against unreasonable seizures. These precedents, however, cannot be so readily discarded.

This Court's "seizure" precedents often talk about "intrusion on possessory interests." *United States* v. *Place*, 462 U.S. 696, 705 (1983). Thus in *United States* v. *Jacobsen*, 466 U.S. 109 (1984), for example, the Court explained that a Fourth Amendment seizure occurs whenever there is "some meaningful interference with an individual's possessory interests in * * * property" (*id.* at 113), and that the reasonableness of a seizure is to be judged by weighing the reasons for it against its impact on "protected property interest[s]." *Id.* at 125. See also, *e.g.*, *Arizona* v. *Hicks*, 480 U.S. 321, 324 (1987) (recording of serial numbers on stereo equipment not a seizure because "it did not 'meaningfully interfere' with * * * possessory interest[s] in either the serial numbers or the equipment"); *Maryland* v. *Macon*, 472 U.S. 463, 469 (1985). According to these precedents, the existence of a seizure depends simply upon whether the owner's full dominion and control over the property has been impeded in some way.

The distinction between the protection of property interests on the one hand and privacy and liberty interests on the other -- which the court of appeals would attribute to their coverage by different constitutional provisions -- is in fact drawn by the terms of the Fourth Amendment itself. This Court recognized in *Hicks* that "the interest protected by the Fourth Amendment injunction against unreasonable searches is quite different from that protected by its injunction against unreasonable seizures." 480 U.S. at 328. The Court cited with approval (*ibid.*) Justice Stevens' articulation in *Texas* v. *Brown*, 460 U.S. 730, 747 (1983) (concurring): the Fourth Amendment "protects two different interests of the citizen -- the interest in retaining possession of property and the interest

in maintaining personal privacy," and "[a] seizure threatens the former." See also *Horton* v. *California*, 496 U.S. 128, 133 (1990) ("The right to security in person and property protected by the Fourth Amendment may be invaded in quite different ways by searches and seizures. A search compromises the individual interest in privacy; a seizure deprives the individual of dominion over his or her person or property").

Of course, interests in property, privacy, and liberty will often all be affected in varying degrees by a particular search or seizure -- as they were by the seizure in this case (see *infra*, pp. 13-16), and as they are when a search involves rummaging through personal effects or when it is a person who is seized. But the essence of a seizure, as this Court has so often stated, is that it infringes part of the bundle of rights "to possess, use and dispose of" property that are the hallmarks of ownership (and, with appropriate modification, of lesser interests in property as well). *United States* v. *General Motors Corp.*, 323 U.S. 373, 378 (1945).

The court of appeals' hypothesis that the Fourth Amendment does not protect possessory interests alone and that seizures must involve an invasion of privacy or liberty leaves any number of this Court's Fourth Amendment rulings inexplicable on their facts. For example, in *Jacobsen*, 466 U.S. at 120 & n.18, this Court held that a package had been "seized" even though it was previously opened by a private party, thus extinguishing any protectible privacy interest vis-à-vis the government. Though no privacy interests were at stake, the decision of government agents to take possession of the contents of the package and test them was subject to Fourth Amendment limits: "a seizure lawful at its inception can nevertheless violate the Fourth Amendment because its manner of execution unreasonably infringes possessory interests. * * * Here, the field test did affect respondents' possessory interests protected by the Amendment." *Id.* at 124-125. *Jacobsen* would have been wrongly decided on the theory applied by the court of appeals, because the absence of a protectible privacy interest should conclusively have negated any possible Fourth Amendment seizure of the opened package.

The inconsistencies by no means end at *Jacobsen*. In *G.M. Leasing Corp.* v. *United States*, 429 U.S. 338, 351-352 (1977), the Court tested the impoundment of vehicles located in open areas against the Fourth Amendment reasonableness standard. It treated the fact that no privacy interest had been infringed as relevant to the reasonableness of the seizure -- but as wholly irrelevant to the question whether a seizure had occurred in the first place. And in *Horton*, the Court held that seizure of an item in plain view "generally does implicate the [Fourth] Amendment's limitations upon seizures of personal property" (496 U.S. at 133 n.5), even though "the seizure *does not involve an intrusion on privacy*" (*id.* at 141) (emphasis added). See also *United States* v. *Salvucci*, 448 U.S. 83, 91 n.6 (1980) (persons whose property is wrongfully seized may seek return of that property under the Fourth Amendment irrespective of privacy concerns); *Katz* v. *United States*, 389 U.S. 347, 350 (1967) (The Fourth Amendment "protects individual privacy against certain kinds of governmental intrusion, but its protections go further, and often have nothing to do with privacy at all").

Moreover, given the Fourth Amendment's general applicability to administrative searches and seizures (see *Camara* v. *Municipal Court*, 387 U.S. 523 (1967)), the Seventh Circuit majority's categorical refusal to subject the conduct at issue here to Fourth Amendment scrutiny because in the majority's view it infringed only possessory interests would create some remarkably anomalous distinctions. Under the Seventh Circuit's theory, for example, government health and safety inspectors would be required to obtain a warrant to enter a home (*id.* at 532-533), but the Fourth Amendment would have no application at all to the government's total removal and confiscation of the home.

To support its view that Fourth Amendment seizures can only derive from intrusions on privacy or liberty, the court of appeals relied entirely upon *Hudson* v. *Palmer*, 468 U.S. 517 (1984). But it is clear that *Hudson*'s determination that the Fourth Amendment does not apply to seizures of property of prison inmates "was premised on the Court's conclusion that prison

inmates have neither privacy *nor possessory* rights in property maintained in their jail cells." Pet. App. A 1085. See 468 U.S. at 538 (O'Connor, J., concurring) ("The fact of arrest and incarceration abates all legitimate Fourth Amendment privacy and possessory interests in personal effects"). In fact, Justice Stevens dissented at length from precisely this aspect of the majority's opinion. See *id.* at 542. *Hudson* thus reinforces the fact that Fourth Amendment seizures depend only upon the existence of property interests, the presence of which is not in dispute here.

The Seventh Circuit's artificial restriction on Fourth Amendment protection for property interests is unjustified as a reading of the text of the Amendment, or as an interpretation of this Court's precedents. This Court should see the decision below for what it is -- an aberrational reaction to the court of appeals' misplaced fear about the expansion of federal litigation -- and reject it in favor of the traditional view that the Fourth Amendment protects against unreasonable interference with property interests.

B. Recognition That The Fourth Amendment Is Implicated By The Removal Of The Soldal Family's Home Invites No Undue Expansion Of Federal Litigation.

The court of appeals made no effort to disguise the fact that its narrow interpretation of the scope of Fourth Amendment protection against "seizures" was substantially driven by a fear of expanded federal litigation, and of the supposed need to develop new federal common law by which to judge the reasonableness or otherwise of evictions like the one that gave rise to this suit. The court of appeals majority argued that to interpret "a constitutional provision enacted two centuries ago [literally] to make every repossession and eviction with police assistance actionable under -- of all things -- the Fourth Amendment would both trivialize the amendment and gratuitously shift a large body of routine commercial litigation from the state courts to the federal courts." Pet. App. A 1077. See also *id.* at 1081 (Easterbrook, J., concurring) (interpretation urged by petitioners would "requir[e] *substantive* federal review of the 'reasonableness'" of state actors' decisions). These concerns, however, are both misplaced and illegitimate.

To begin with, reversal in this case will not unleash a flood of new federal litigation. As we have shown above, this Court's precedents have long established that the Fourth Amendment protects against unreasonable seizures of property as such; yet this case appears to be unique. Moreover, the parade of horribles recounted by Judge Easterbrook (Pet. App. A 1081) greatly exaggerates the consequences of the textually and precedentially justified interpretation of the term "seizure" that we urge this Court to reaffirm. It is simply not the case that a ruling in petitioners' favor would mean that "[p]ublic employees repairing a street [who] negligently rupture a gas main, requiring the evacuation of a city block" could be sued in damages under Section 1983 for a violation of the Fourth Amendment. *Ibid.* It is impossible to identify in that situation any palpable property interest that can accurately be said to have been "seized" in any ordinary sense of that term. Likewise, although a public utility's customer has a property interest in the water or electricity (for example) that flows into his or her home sufficient to trigger Fourteenth Amendment procedural protections (see *Memphis Light, Gas & Water Div.* v. *Craft*, 436 U.S. 1 (1978)), that interest is simply too intangible to be subject to a seizure within the meaning of the Fourth Amendment. Cf. Pet. App. A 1081. These sorts of common-sense limitations, which are readily derived from the ordinary meaning of the verb "seize," read in light of common law principles of property, go a long way to ensuring that the explosion of litigation feared by the Seventh Circuit cannot occur.

There is, in any event, something deeply disturbing about the Seventh Circuit's determination to deny Fourth Amendment protection for the Soldal family's property rights by labelling the events here as a "garden-variety commercial dispute." Pet. App. A 1076. Even without the intervention of the police in support of Terrace Properties' actions, the blatant illegality of those actions -- the brazen violation of a law doubtless adopted because the Illinois legislature realized just how disruptive of a family's life together an eviction can be -- would take this case well beyond the level of a commonplace commercial dispute. But the co-option of the state adds another dimension entirely; it means that the removal of

petitioners' home closely parallels the seizures under Writs of Assistance that were a prime target of the Framers of the Fourth Amendment.

These writs were granted to enable private citizens to conduct searches and seizures and commanded all officers of the Crown to assist in their execution. The colonists regarded the writ as "the worst instrument of arbitrary power, the most destructive of English liberty, and the fundamental principles of law, that was ever found in an English law book." *Boyd* v. *United States*, 116 U.S. 616, 624-625 (1886). "[O]ne of the most essential branches of English liberty," it was recognized, "is the freedom of one's house," in which one "is as well guarded as a prince in his castle": "This writ, if it should be declared legal, would totally annihilate this privilege." Wasserstrom, *The Fourth Amendment's Two Clauses*, 26 Am. Crim. L. Rev. 1389, 1399 n.14 (1989) (quoting James Otis' argument in the 1761 *Writs of Assistance Case*). It is generally acknowledged that the colonists' hostility to Writs of Assistance evolved into "[t]he driving force behind the adoption of the [Fourth] Amendment." *United States* v. *Verdugo-Urquidez*, 494 U.S. 259, 266 (1990). See N. Lasson, *The History and Development of the Fourth Amendment to the United States Constitution* 59-61 (1937). To describe the seizure in this case, which thus lies at the core of Fourth Amendment concern, as a mere "commercial dispute" not warranting the Amendment's protection is patently unjustified and historically perverse. As Judge Flaum explained, writing for five members of the court below in dissent (Pet. App. A 1087):

> This is not, as the majority alleges, an ordinary dispute between landlord and tenant, nor is it a case in which the police merely tried to "keep the peace." This is a troubling case in which the claim is that a landlord and the local police illegally teamed up to dislodge a man's home from its moorings and towed it away simply because they both found him disagreeable. I see *nothing* ordinary about this course of events.

This Court should reject the Seventh Circuit's assumption that the federal courts are incapable of analyzing the reasonableness of seizures like the one involved here. In the current procedural posture of this case, however -- on petition from a grant of summary judgment to respondents -- the ultimate reasonableness or otherwise of the seizure of the Soldals' home is not in issue in this Court. See *O'Connor* v. *Ortega*, 480 U.S. 709, 726-727 (1987). That reasonableness inquiry is a fact-specific one dependent upon all the circumstances of the case. *Id.* at 725-726; *Jacobsen*, 466 U.S. at 124; *Graham* v. *Connor*, 490 U.S. 386, 396 (1989). This Court should therefore remand this dispute in order that the trial court may conduct the reasonableness inquiry in the first instance.

C. The Seizure Of The Soldal Family's Home Invaded Their Privacy And Liberty Interests As Well As Their Possessory Interest In Their Property.

Having held -- incorrectly -- that the Fourth Amendment does not govern seizures of property "as such," only seizures that implicate privacy or liberty interests, the court of appeals went on to decide that petitioners had no Fourth Amendment complaint under this newly-minted standard: "Mr. Soldal lost his property, but not his privacy or his liberty." Pet. App. A 1080. This erroneous view provides independent grounds for reversing the court of appeals' judgment. Respondents' egregious conduct in disconnecting the Soldals' home from basic utilities and towing it away interfered with both the family's privacy and its liberty interests.

For decades, this Court has recognized that the Fourth Amendment protects privacy not only in the sense of secrecy, but in "the right to be let alone -- the most comprehensive of rights and the right most valued by civilized men." *Olmstead* v. *United States*, 277 U.S. 438, 478 (1928) (Brandeis, J., dissenting). This Court has also taken special care to emphasize that Fourth Amendment privacy interests are at their strongest when they involve the home. Indeed, the sanctity of the home has always been given the "most scrupulous protection from government invasion." *Oliver*

v. *United States*, 466 U.S. 170, 178 (1984). As the Court held in *Silverman* v. *United States*, 365 U.S. 505, 511 (1961), "[a]t the very core [of the Fourth Amendment] stands the right of a man to retreat into his own home and there be free from unreasonable government intrusion." See also *Katz* v. *United States*, 389 U.S. at 361 (Harlan, J., concurring) ("a man's home is, for most purposes, a place where he expects privacy"); *Camara* v. *Municipal Court*, 387 U.S. 523, 529 (1967) ("The right of officers to thrust themselves into a home is * * * a grave concern, not only to the individual but to a society which chooses to dwell in reasonable security and freedom from surveillance"). As these cases suggest, the mere fact that police do not physically enter into a home, leaving "its interior uncompromised and unobserved" (Pet. App. A 1078), is immaterial. Here, the Soldals' Fourth Amendment privacy interests were implicated the instant that respondents brutally interfered with their right to be left undisturbed in their home. Indeed, the invasion of privacy that occurred here was as egregious as any intrusion; the Soldals had the privacy of their home taken away *entirely* -- along with the home itself. The court of appeals' decision that no privacy interests were implicated here is truly mystifying.

This case involves privacy intrusions comparable to those recognized by the Ninth Circuit in *United States* v. *Lindsey*, 877 F.2d 777, 780 (1989). In *Lindsey*, privacy was held to have been invaded when police entered a residence not to search but to "secure" it pending authorization for a search. Because no search was involved, it is clear that the Ninth Circuit's determination that privacy had been infringed did not rest on a simplistic "prying eyes" theory of privacy of the sort adopted by the Seventh Circuit in this case, but on a more sophisticated analysis based on the sanctity of the home from government interference, with its availability as a retreat and personal space. It is that use of the home as a locus of private life -- indeed, its use for any normal purpose whatever -- that was infringed in this case and that triggers Fourth Amendment scrutiny.

The court of appeals' view that respondents' actions in no way interfered with the Soldals' liberty interests is perhaps in even

more perverse disregard of precedent, for it cannot be reconciled with this Court's decision in *United States* v. *Place*. The Court held in *Place* that a 90-minute detention of an airline passenger's luggage was sufficient to effect a "seizure" because, "[p]articularly in the case of detention of luggage within the traveler's immediate possession, the police conduct intrudes on both the suspect's possessory interest in his luggage as well as his liberty interest in proceeding with his itinerary." 462 U.S. at 708. How much more intrusive on liberty, then, was the state's action in this case, which deprived the Soldals not of their interest in continuing on with a travel itinerary, but in continuing their lives together in the security of their own home! Indeed, the Soldals were prevented even from entering their home. In addition, and more prosaically, the Soldals had a liberty interest recognized by Illinois law to use reasonable efforts to protect the sanctity of their home by avoiding illegal eviction; the sheriff's deputies' stated purpose in being on the scene, however, was to prevent the Soldals from exercising that freedom. Pet. App. A 1074.

The court of appeals' determination that no privacy or liberty interests were infringed when officers of the state stripped the Soldals' trailer of its utilities, awning, and skirting, then towed it to a site where it was unusable, ignores the realities of life for those who call a trailer "home." As this Court explained recently in *Yee* v. *City of Escondido*, 60 U.S.L.W. 4301, 4302 (U.S. Apr. 1, 1992), the permanence of a trailer's site is a central element of its ability to serve as a home:

> The term "mobile home" is somewhat misleading. Mobile homes are largely immobile as a practical matter, because the cost of moving one is often a significant fraction of the value of the mobile home itself. They are generally placed permanently in parks; once in place, only about one in every hundred mobile homes is ever moved. * * * A mobile home owner typically rents a plot of land, called a "pad," from the owner of a mobile home park. * * * The mobile home owner often invests in site-specific improvements such as a driveway, steps, walkways,

> porches, or landscaping. When the mobile home owner wishes to move, the mobile home is usually sold in place, and the purchaser continues to rent the pad on which the mobile home is located.

When a pad is lost because of the sort of illegal removal that occurred in this case, it can often be difficult for trailer owners to continue their lives in their own home on another site; many trailer owners have incomes below the poverty level and are extremely vulnerable to abuses of the sort involved here. See Bureau of Census, American Housing Survey for the United States, Table 2-12 (1989); *Lavoie* v. *Bigwood*, 457 F.2d 7, 14 (1st Cir. 1972) (mobile homes provide special "opportunity for families of modest means"). For many residents of trailers, homes are even less fungible or replaceable than for the majority of the population, and the loss of liberty and privacy that goes with the loss of a functioning trailer-home cannot be overstated.

II. THERE IS NO REQUIREMENT THAT SECTION 1983 CLAIMS BE JUDGED SOLELY UNDER THE CONSTITUTIONAL STANDARD APPROPRIATE TO THE "DOMINANT CHARACTERISTIC" OF THE CLAIM.

The court of appeals' decision also represents an unprecedented restriction on the constitutional remedies afforded by 42 U.S.C. § 1983. The court of appeals broadly held that seizures of property are cognizable only under the Due Process Clause of the Fifth and Fourteenth Amendments (or, in some cases, the Takings Clause), and that all Section 1983 claims based upon property seizures may be brought only as due process violations. The court held that Section 1983 plaintiffs cannot elect their constitutional claim -- despite the usual rule in our legal system that "[p]laintiffs are masters of their case" (*Davis* v. *A & J Electronics*, 792 F.2d 74, 76 (7th Cir. 1986)) -- but that the "dominant character of the conduct" complained of is determinative of the uniquely applicable constitutional standard. A plaintiff is to have no control over the scope of her Section 1983 claim: the facts and the Constitution together point inexorably to a particular sort of claim and an

appropriate standard for judging whether the Constitution has been violated. This holding is untenable.

The Seventh Circuit apparently believed plaintiffs should not have Section 1983 claims for Fourth Amendment violations involving seizures of property because a plaintiff would have alternative remedies for that sort of conduct -- "state remedies if they are adequate, a federal [Section 1983] remedy under the due process clause if not." Pet. App. A 1076. That reasoning is plainly illegitimate under this Court's decision in *Zinermon* v. *Burch*, 494 U.S. 113, 125 (1990). *Zinermon* established that because the Due Process Clause of the Fourteenth Amendment incorporates "many of the specific protections defined in the Bill of Rights," including the Fourth Amendment's protection against unreasonable searches and seizures, a plaintiff "may bring suit under § 1983 for state officials' violation of his righ[t] to * * * freedom from unreasonable searches and seizures." *Ibid.* The availability of alternative state remedies is irrelevant to the existence of this cause of action: "A plaintiff * * * may bring a § 1983 action for an unlawful search and seizure despite the fact that the search and seizure violated the State's Constitution or statutes, and despite the fact that there are common-law remedies for trespass and conversion." *Id.* at 124-125.

The Seventh Circuit's holding that Fourth Amendment claims of unreasonable seizure of property merge with and are subsumed in procedural due process claims and lose any independent identity is particularly strange in light of the careful distinction drawn in *Zinermon* between these two types of claim. *Zinermon* makes clear that Section 1983 is an appropriate vehicle to pursue both a remedy for a substantive Fourth Amendment violation, and a remedy for a procedural due process violation, which, the Court noted, typically goes not to the deprivation of a protected substantive interest, but to the method of the deprivation. 494 U.S. at 125 ("In procedural due process claims, the deprivation by state action of a constitutionally protected interest in 'life, liberty, or property' is not in itself unconstitutional; what is unconstitutional is the deprivation of such interest without due process of law"). The Seventh Circuit's ruling would deny petitioners the ability to get

the denial of their Fourth Amendment rights adjudicated within the framework of Section 1983 -- and quite apart from claims relating to their procedural due process rights -- as *Zinermon* provides.

The court of appeals' decision also rests upon a misreading of *Graham* v. *Connor*. In *Graham*, the plaintiff brought a Section 1983 claim alleging violations of both the Fourth Amendment and of his *substantive* rights under the Due Process Clause of the Fourteenth Amendment, based upon allegations of excessive force in the course of an arrest. This Court recognized that "[i]n most instances" claims of excessive force during an arrest implicate the Fourth Amendment's prohibition against unreasonable seizures. 490 U.S. at 394. The Court required application in those instances of the more detailed substantive standards provided by the Fourth Amendment, rather than of the "more generalized notion of 'substantive due process.'" *Id.* at 395.

There is *nothing* in *Graham* to suggest that Section 1983 claims can only be based upon violations of the one constitutional right that appears best to encompass the "dominant characteristic" of the conduct in issue. On the contrary, the Court rejected the argument that Section 1983 itself provided a single generic standard for evaluating excessive force claims, noting that the statute "merely provides 'a method for vindicating federal rights elsewhere conferred.'" 490 U.S. at 394. That conception of Section 1983 as simply a vehicle for pursuing substantive claims drawn from the Constitution is wholly inconsistent with the Seventh Circuit's view of the statute as the source of an independent (and of course extra-textual) *limit* on the constitutional claims that it can be used to vindicate.

More important, this is not a case like *Graham*, in which the Fourth and Fourteenth Amendments offered alternative theories of recovery for precisely the same injury, as the Seventh Circuit seemed to assume. The Fourth Amendment provides redress for the seizure of the Soldals' property. The Fourteenth Amendment, on the other hand, provides redress for their arbitrary and state-assisted eviction. *Graham* cannot plausibly be construed to prohibit the Soldals from electing the former claim, merely

because they may also be able to prove the latter. Indeed, the independence of those two claims under Section 1983 is expressly acknowledged in this Court's subsequent decision in *Zinermon*. See 494 U.S. at 125.

There is simply no justification for the artificial limit on Section 1983 claims that the Seventh Circuit devised in this case -- not in the statute itself, in this Court's precedents, or in good policy.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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MAY 1992